

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
Charles K. Verhoeven (Cal. Bar No. 170151)
2 charlesverhoeven@quinnemanuel.com
David A. Perlson (Bar No. 209502)
3 davidperlson@quinnemanuel.com
50 California Street, 22nd Floor
4 San Francisco, California 94111
Telephone: (415) 875-6600
5 Facsimile: (415) 875-6700

6 Kevin P.B. Johnson (Cal. Bar No. 177129)
kevinjohnson@quinnemanuel.com
7 Victoria F. Maroulis (Cal. Bar No. 202603)
victoriamaroulis@quinnemanuel.com
8 555 Twin Dolphin Drive 5th Floor
Redwood Shores, California 94065
9 Telephone: (650) 801-5000
Facsimile: (650) 801-5100

10 Attorneys for Samsung Electronics Co., Ltd.,
11 Samsung Electronics America, Inc., and
12 Samsung Research America, Inc.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 HUAWEI TECHNOLOGIES CO., LTD., et al.,
17 Plaintiffs,
18 v.
19 SAMSUNG ELECTRONICS CO., LTD., et al.,
20 Defendants.

CASE NO. 16-cv-02787-WHO

**DECLARATION OF GUANBIN XIE IN
SUPPORT OF SAMSUNG'S MOTION TO
ENJOIN HUAWEI FROM ENFORCING
THE INJUNCTION ISSUED BY THE
INTERMEDIATE PEOPLE'S COURT OF
SHENZHEN**

21 SAMSUNG ELECTRONICS CO., LTD. &
22 SAMSUNG ELECTRONICS AMERICA, INC.,

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

23 Counterclaim-Plaintiffs,

24 v.

25 HUAWEI TECHNOLOGIES CO., LTD,
HUA WEI DEVICE USA, INC., HUAWEI
26 TECHNOLOGIES USA, INC. & HISILICON
TECHNOLOGIES CO., LTD.,

27 Counterclaim-Defendants.
28

1 I, Guanbin Xie, declare as follows:

2 1. I am an attorney at the law firm of Lifang Partners, counsel for Samsung's Chinese
3 affiliates. I submit this declaration in support of Samsung's Motion To Enjoin Huawei from
4 Enforcing the Injunction Issued by the Intermediate People's Court of Shenzhen. I have personal
5 knowledge of the facts set forth in this declaration and, if called upon as a witness, I could and
6 would testify to such facts under oath.

7 **Overview of Huawei's Litigation Against Samsung in China**

8 2. Since May 25, 2016, Huawei has filed a total of twenty-one lawsuits against
9 Samsung in the People's Republic of China ("China"), including thirteen standard-essential patent
10 ("SEP") infringement suits, seven non-standard-essential patent ("NSEP") infringement suits, and
11 one rate-setting and royalty payment suit.¹ Of those original twenty-one lawsuits, Huawei has
12 withdrawn one SEP infringement suit and two NSEP infringement suits.

13 **Proceedings Before the Shenzhen Intermediate People's Court**

14 3. On May 25, 2016, Huawei Technologies Co., Ltd. ("Huawei") filed nine patent
15 infringement lawsuits against Chinese affiliates² of Samsung Electronics Co., Ltd. ("Samsung")
16 in the Shenzhen Intermediate People's Court ("Shenzhen Court"). Huawei Terminals Co., Ltd.
17 ("Huawei Terminals") filed an additional patent infringement lawsuit against Samsung's Chinese
18 affiliates in the Shenzhen Court on the same day. Eight of the ten lawsuits involve SEPs. In those
19 eight lawsuits, Huawei requested that the Shenzhen Court enjoin Samsung's alleged infringement,
20 and Huawei elected not to seek damages. In the other two lawsuits, both involving NSEPs, Huawei
21 requested that the Shenzhen Court (1) enjoin the alleged infringement of Samsung's Chinese
22 affiliates, and (2) order Samsung's Chinese affiliates to pay damages of RMB 80 million and
23 expenses of RMB 500,000 for each infringed patent. Samsung's affiliates were served by

24 ¹As a countermeasure to the lawsuits brought by Huawei in China, Samsung has filed twenty-two
25 lawsuits in response, including fourteen SEP infringement suits and eight NSEP infringement suits.
26 Of those twenty-two lawsuits, five SEP infringement suits and five NSEP infringement suits have
since been withdrawn.

27 ²Samsung (China) Investment Co., Ltd. ("Samsung China"), Samsung Electronics Huizhou Co.,
28 Ltd. ("Samsung Huizhou"), Tianjin Samsung Communication Technology Co., Ltd., and
Shenzhen Nanfangyunhe Technology Co., Ltd.

1 Shenzhen Court on June 7, 2016.

2 4. On December 19-23, 2016 and January 12-13, 2017, hearings occurred in two of
3 the SEP infringement lawsuits filed by Huawei in the Shenzhen Court. Those two lawsuits
4 involve Chinese Patent Nos. 201010137731.2 and 201110269715.3, which are
5 counterparts, respectively, of U.S. Patent Nos. 8,885,587 and 8,369,278 asserted by Huawei in the
6 action before this Court. At the hearing on December 19, 2016, Samsung China requested to add
7 Samsung, its parent company, as a party because Samsung led the license negotiations with
8 Huawei at issue in the case. The Shenzhen Court denied this request.

9 5. During the hearings, Huawei argued that its licensing offers were consistent with its
10 FRAND obligations. Huawei rested this argument on its assertion that its offers were consistent
11 with the relative strength of each party's patent portfolio and with the rates in licenses it argued
12 were comparable. Huawei further argued that Samsung negotiated in bad faith by refusing to pay a
13 meaningful royalty, pursuing delay, and refusing to arbitrate. Huawei also asserted that
14 Samsung's proposed royalty rates undervalued Huawei's patent portfolio and inappropriately
15 relied on the InterDigital royalty rate.

16 6. Samsung's Chinese affiliates argued in response that Huawei violated its FRAND
17 obligations by (1) consistently insisting on applying a [REDACTED] throughout a
18 negotiation that lasted more than four years, (2) exaggerating the number of patents Huawei
19 acquired from Sharp, (3) pursuing a patent "hold up" strategy by asking for injunctions while
20 simultaneously asking a U.S. court to determine FRAND terms, and (4) asking for a royalty rate
21 not commensurate with the relative strength of the parties' patent portfolios.

22 7. On January 11, 2018, the Shenzhen Court issued an order finding that Samsung's
23 Chinese affiliates infringe Chinese Patent Nos. 201010137731.2 and 201110269715.3. The
24 Shenzhen Court entered an injunction prohibiting Samsung's Chinese affiliates from any further
25 infringement of those two patents. The Shenzhen Court made findings to support its order
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1

2

3

4

5

...

6

7

8

9

10

11

12

13

14

15 8. On January 26, 2018, Samsung's Chinese affiliates filed a notice of appeal of the
16 judgment of the Shenzhen Court to the Guangdong High People's Court.

17 9. Of the remaining six SEP infringement lawsuits filed by Huawei in the Shenzhen
18 Court, five have not yet had a hearing, and one was withdrawn on June 14, 2017. On March 31 and
19 June 26, 2017, Huawei withdrew the two NSEP infringement lawsuits it filed in the Shenzhen
20 Court.

21 10. In response to the ten patent infringement lawsuits filed by Huawei and Huawei
22 Terminals, Samsung filed eight SEP infringement lawsuits and two NSEP infringement lawsuits
23 against Huawei on July 8, 2016 in the Shenzhen Court. Samsung has since withdrawn four of the
24 SEP infringement lawsuits and the two NSEP infringement lawsuits. Of the four SEP
25 infringement lawsuits filed by Samsung that are currently outstanding, two have had a hearing and
26 are currently awaiting judgment, and the other two have not yet had a hearing.

27 **Proceedings Before the Guangzhou Intellectual Property Court**

28 11. On May 25, 2016, Huawei Terminals filed an NSEP infringement lawsuit against

1 two of Samsung's Chinese affiliates³ in the Guangzhou Intellectual Property Court ("Guangzhou
2 IP Court"). Huawei Terminals requested that the Guangzhou IP Court enjoin Samsung's alleged
3 infringement and order that Samsung pay all litigation costs. The Guangzhou IP Court has since
4 suspended the hearing for this lawsuit.

5 12. In response to the patent infringement lawsuit filed by Huawei Terminals,
6 Samsung filed an NSEP infringement lawsuit against Huawei on July 8, 2016 in the Guangzhou IP
7 Court. Samsung has withdrawn this case.

8 **Proceedings Before the Quanzhou Intermediate People's Court**

9 13. On June 12, 2016, Huawei Terminals filed an NSEP infringement lawsuit against
10 Chinese affiliates⁴ of Samsung in the Quanzhou Intermediate People's Court ("Quanzhou Court").
11 Huawei Terminals requested that the Quanzhou Court (1) enjoin the alleged infringement of
12 Samsung's Chinese affiliates, and (2) order Samsung's Chinese affiliates to pay damages of RMB
13 80 million and expenses of RMB 500,000.

14 14. On December 5-6 and 26-29, 2016, January 17-20, 2017, and February 16-17 and
15 20-21, 2017, hearings occurred before the Quanzhou Court in Huawei Terminals' NSEP
16 infringement lawsuit.

17 15. On March 30, 2017, the Quanzhou Court entered judgement in Huawei Terminals'
18 favor, granting all of Huawei Terminals' litigation requests.

19 16. On April 14, 2017, Samsung's Chinese affiliates appealed the judgment of the
20 Quanzhou Court to the Fujian High Court. The Fujian High Court held hearings on June 28, July
21 19, and August 10-11, 2017. The Fujian High Court has confirmed the Quanzhou Court's
22 judgement.

23 17. In response to the NSEP infringement lawsuit filed by Huawei Terminals, Samsung
24 filed an NSEP infringement lawsuit against Huawei on August 8, 2016 in the Quanzhou Court.
25 Samsung has applied to stay this case.

26 ³Samsung China and Samsung Huizhou

27 ⁴Samsung China, Samsung Huizhou, Tianjin Samsung Communication Technology Co., Ltd., and
28 Fujian Quanzhou Huayuan Electron Co., Ltd.

Proceedings Before the Beijing Intellectual Property Court

18. On July 8, 2016, and in response to the ten patent infringement lawsuits filed by Huawei and Huawei Terminals in the Shenzhen Court, Samsung filed four SEP infringement lawsuits and two NSEP infringement lawsuits against Huawei in the Beijing Intellectual Property Court ("Beijing IP Court"). Samsung has since withdrawn two of the SEP infringement lawsuits and two of the NSEP infringement lawsuits. A hearing has not yet been held for the two SEP infringement lawsuits currently outstanding.

19. On September 8, 2016, Huawei filed five SEP infringement lawsuits and one NSEP infringement lawsuit against Chinese affiliates⁵ of Samsung in the Beijing IP Court. In the five SEP infringement lawsuits, Huawei requested that the Beijing IP Court enjoin the alleged infringement of Samsung's Chinese affiliates. In the NSEP infringement lawsuit, Huawei requested that the Beijing IP Court (1) enjoin the alleged infringement of Samsung's Chinese affiliates, and (2) order Samsung's Chinese affiliates to pay damages of RMB 80 million and expenses of RMB 500,000. The Beijing IP Court has dismissed Huawei's non-SEP infringement lawsuit but has not yet held a hearing on the five SEP infringement lawsuits filed by Huawei.

Proceedings Before the Xi'an Intermediate People's Court

20. On July 8, 2016, and in response to the ten patent infringement lawsuits filed by Huawei and Huawei Terminals in the Shenzhen Court, Samsung filed two SEP infringement lawsuits and two NSEP infringement lawsuits against Huawei in the Xi'an Intermediate People's Court ("Xi'an Court"). Samsung has since withdrawn the two NSEP infringement lawsuits. A hearing has not yet been held for the two SEP infringement lawsuits and one NSEP infringement lawsuit currently outstanding.

21. On October 24, 2016, Huawei filed two NSEP infringement lawsuits against Chinese affiliates⁶ of Samsung in the Xi'an Court. Huawei requested that the Xi'an Court (1)

⁵Samsung China, Samsung Huizhou, Tianjin Samsung Communication Technology Co., Ltd. and Beijing Xingqitong Telecom Technology Co., Ltd.

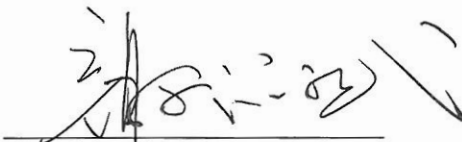
⁶Samsung China, Samsung Huizhou, Tianjin Samsung Communication Technology Co., Ltd. and Beijing Zhongbaixin Software Technology Co., Ltd.

1 enjoin the alleged infringement of Samsung's Chinese affiliates, and (2) order Samsung's Chinese
 2 affiliates to pay damages of RMB 80 million and expenses of RMB 500,000. Huawei has
 3 withdrawn one of the non-SEP infringement lawsuit. The Xi'an Court has since resumed the
 4 hearing for the remaining lawsuit.

5 **Proceedings Before the Guangdong High People's Court**

6 22. On March 31, 2017, Huawei filed a FRAND rate-setting and royalty payment
 7 lawsuit against Samsung and three of Samsung's Chinese affiliates⁷ in the Guangdong High
 8 People's Court ("Guangdong High Court"), the superior court of Shenzhen Court, requesting that
 9 the Guangdong High Court (1) determine the royalty rates of the two parties' respective LTE
 10 Chinese patent portfolios, (2) determine the royalty amount respectively payable by the two parties
 11 during 2011 to 2016, and (3) order Samsung to pay Huawei an offset amount of RMB 3.2 billion,
 12 expenses of RMB 3 million, and bear all legal costs. The Guangdong High Court has not yet held
 13 a hearing on this lawsuit.

14 I declare under penalty of perjury under the laws of the United States of America that the
 15 foregoing is true and correct to the best of my knowledge. Executed January 29, 2018, in Beijing,
 16 China.

17
 18 
 19 _____
 20 Guanbin Xie
 21
 22
 23
 24
 25
 26

27 ⁷Samsung China, Samsung Huizhou, and Tianjin Samsung Communication Technology Co., Ltd.
 28